ELECTRONIC MAIL (Email)

Risky Business?

Federal Records

A Federal record is anything created or received by agencies or contractors in the course of government business. A Federal record can:

- Be on any media: e.g. electronic, digital, microfilm, microfiche, audio tape, video tape, film, paper - you get the idea;

- Be temporary (kept for a limited period of time – a day, a week, months, or years - then destroyed)

- Or permanent (kept FOREVER)

44 USC 3301

Electronic Records

Computerized information or data that meets the definition of a Federal record.

What is email?

"A document created or received on an electronic mail system including brief notes, more formal or substantive narrative documents, and any attachments, such as word processing and other electronic documents, which may be transmitted with the message."
(36 CFR 1234.2)

Email: Why are we talking about it?

Email often replaces phone conversations and face to face meetings.
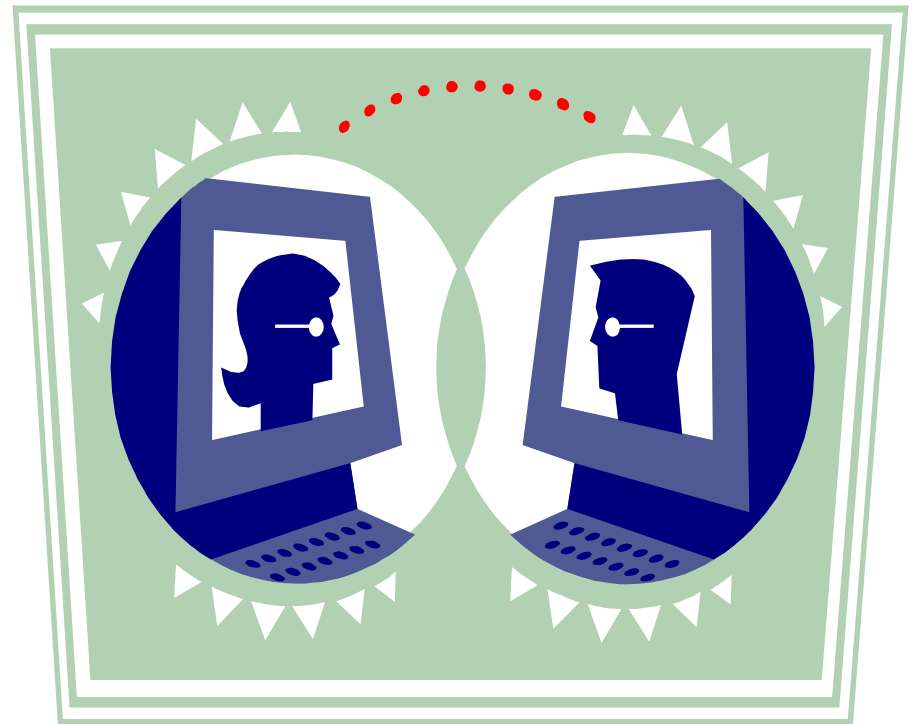
Email: Why are we talking about it?

Email has replaced written memoranda, letters and other types of written communications.

Email: Benefits & Drawbacks

Benefits

- Saves money
- Saves time
- No need for human intervention
- Digital format for sharing & manipulation

Drawbacks

- Informal, careless
- Stays around
- Proliferates
- No privacy
- Potential for misuse
- Virus carrier
- Litigation target

Source: Ann Balough, Records & Info. Report

Recordkeeping Responsibilities of Federal Employees

Agencies must have "adequate and proper documentation" of their activities. Good recordkeeping ensures that agencies:

- Protect the legal and financial rights of citizens and the Government;

- Preserve institutional memory;

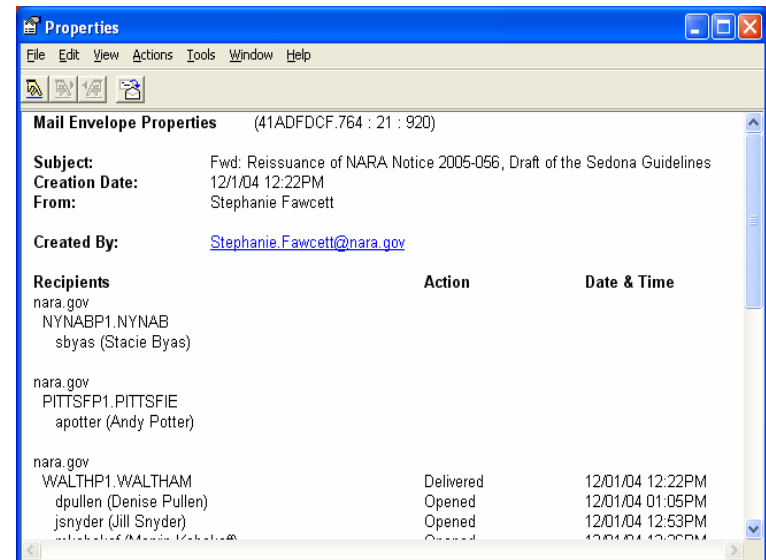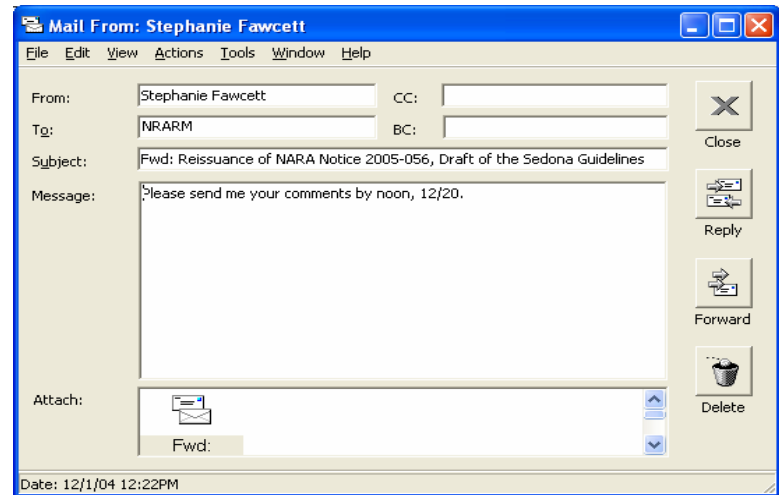- Be accountable to the Congress and public

Armstrong v. Executive Office of the President - 1993

The U.S. Court of Appeals ruled that:

- Electronic versions of documents are Federal records

- Email is different than paper copy because it contains routing and time stamp information (known as transmission data)

- Email must be managed as Federal record

Transmission Data

- Proves who saw a message and when they saw it
- Provides an audit trail
- Lists all recipients

Mail From: Stephanie Fawcett

File   Edit   View   Actions   Tools   Window   Help

From: Stephanie Fawcett   CC:
To: NRARM   BC:
Subject: Fwd: Reissuance of NARA Notice 2005-056, Draft of the Sedona Guidelines
Message: Please send me your comments by noon, 12/20.

Attach: Fwd:

Close   Reply   Forward   Delete

Date: 12/1/04 12:22PM

Properties

File   Edit   View   Actions   Tools   Window   Help

Mail Envelope Properties   (41ADFDCF.764 : 21 : 920)

Subject: Fwd: Reissuance of NARA Notice 2005-056, Draft of the Sedona Guidelines
Creation Date: 12/1/04 12:22PM
From: Stephanie Fawcett

Created By: Stephanie.Fawcett@nara.gov

Recipients	Action	Date & Time
nara.gov		
NYNABP1.NYNAB		
sbyas (Stacie Byas)		
nara.gov		
PITTSFP1.PITTSFIE		
apotter (Andy Potter)		
nara.gov		
WALTHP1.WALTHAM	Delivered	12/01/04 12:22PM
dpullen (Denise Pullen)	Opened	12/01/04 01:05PM
jsnyder (Jill Snyder)	Opened	12/01/04 12:53PM

General Records Schedules (GRS)

General Records Schedules (GRS) cover "housekeeping" records common throughout the Government

- GRS1 -16, 18, 23 include an item that states that copies of email and word processing documents can be deleted
  - It does not cover record copies!
- GRS 20 covers certain types of electronic records.

Email

Email can be records!

- Court decisions confirm email as records
- Email documents an agency's business decisions
  - It may be the only evidence of the decisions
- Email systems do not identify records or ensure their proper retention.

Email

Each employee must be trained to:

- Treat each email as if it were a memo or letter representing the   agency
- Manage, maintain, and dispose of email using their agency's records schedule

Where's the Risk?

"[M]anagement of email systems touches on nearly all functions which a government agency is dependent on record keeping for: privacy administration, vital records management, administrative security, auditing, access, and archives. The need to manage email systems properly, then, is the same for other records keeping systems: to ensure compliance with…statutes concerning the creation, retention, and access to public records." *(emphasis added)*

Delaware State Archives, 1998

Where's the Risk?

- Up to 80% of email creators do not "have a clue" when to classify an email as an official record

- There is "great inconsistency" on which emails are classified as records

- Staffs are "largely unaware" of their organization's email policies

Rick Barry, "Email Legal Status." Message posted to the Australian Archivists (aus-archivists) listserv on March 31, 1998.

Email Fundamentals

- Email should be handled as records
- Email is not, in and of itself, a record series (a group of records filed the same, used the same, made and kept for the same purpose)

Email Fundamentals

- There is no single retention period for all email messages
- How an email is used is more important than its (electronic) medium

Email Fundamentals

- The end-user manages email
- Email will expose any weaknesses in existing record keeping systems
- Managing email is an opportunity for records managers

ARMA International. Electronic Mail Guideline Task Force, E*lectronic Mail Guideline, Draft* (May 1998)

How to Manage Email

- Determine whether an email is a Federal record

- File email (and attachments) properly

- Dispose of transitory email messages according to your agency's records schedule

How to Manage Email

If an email is a Federal record, you should:

- Print a paper copy with transmission data and place it in the appropriate paper file; or
- Save it to an electronic recordkeeping system

Note: Printing alters e-records. Also, it is not always easy to print transmission data.

How to Manage Email

Email policies:

- Help staff use email properly, consistently, and effectively
- Prevent email threats (e.g. computer viruses transmitted via email attachments)
- Help stop misconduct at an early stage
- State email monitoring policy
- Clarify organizational retention issues

How to Manage Email

Email policies should:

- **Define records.** State the definition of a record.

- **Assign responsibility.** Identify who creates and maintains the records.

- **Assure legality.** Establish requirements to ensure the authenticity of the records.

- **Establish disposition.** Ensure appropriate retention and disposition of records.

How to Manage Email

An email policy should address:

- **Appraisal.** Email should have the same retention as similar records in hard copy.

- **Access.** Email records should be identifiable and retrievable.

- **Documentation.** Policy should establish methods to manage the records (e.g. naming conventions and metadata).

- **Storage.** Policy must state where email should be maintained (e.g. in a paper file, electronic file, etc.).

How to Manage Email

Email policy, con't:

- **Media.** Policy should establish standards for care and storage of electronic records and basis for storage media decisions.

- **Functionality.** Policy must define what original functionality must be replicated or documented to ensure continued access to the records when data and systems are migrated.

- **Security.** Policy must ensure the security of email to preserve the rights of individuals and confidentiality required by the organization.

How to Manage Email

Email must be managed from 3 perspectives:

1. Information Technology Management
2. Legal Risk Management
3. Records Management
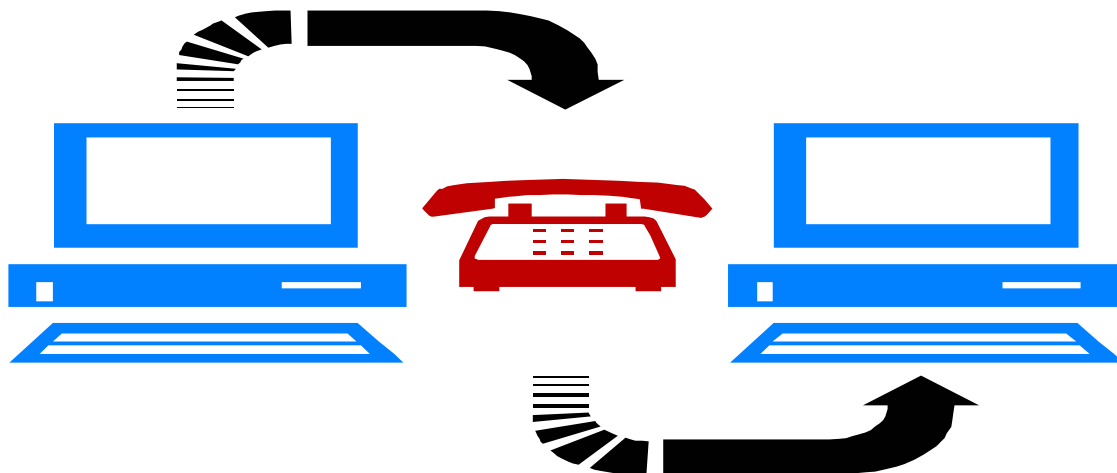
Email – Technical Issues

- Content vs. Format – its content determines whether an email is a record, not its format.

- Email is backed up in large files -- hard to identify or retrieve a single message

- Email is software dependent

Email – Technical Issues

- An email system is not a recordkeeping system

- An email archive is not a file system

- Email transmission data is important (remember Armstrong v. EOP)

Email - Issues

- Employees must be trained
  - to identify records
  - to use the schedule
- Emails may still exist on backup tapes after they are deleted from an individual's inbox
- Emails – whether they are designated Federal records or not - are subject to FOIA and legal discovery
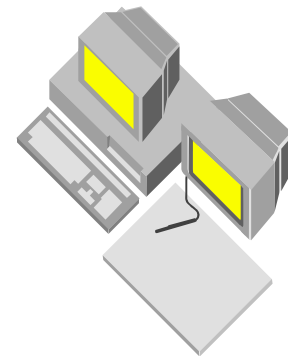
Practical Suggestions

- Most messages aren't "records"
- Use the same criteria as for paper documents
- Have "appropriate use" rules
- Check out document mgmt & RM software to manage email

- Don't use email for sensitive or confidential messages
- Have consistent user settings
- Don't retain messages on the email system for long
- Keep backup tapes for only 30-60 days
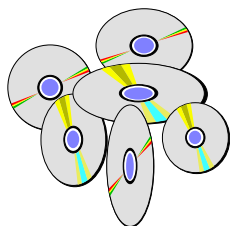
Source: Ann Balough, Records & Info. Report

Who to Contact

- Your Agency's Records Officer
- Local NARA staff

Thank You

For more information contact:

Stephanie Fawcett,

Director, Records Management Program

NARA-Northeast Region

781.663.0124

Stephanie.fawcett@nara.gov